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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

COLUMBUS & GREENVILLE RAILWAY COMPANY ET AL., Petitioners;

VS. NO. 195

W. J. MILLER, STATE TAX-COLLECTOR, ETC., Respondent.

PETITION FOR WRIT OF CERTIORARI WITH BRIEF THEREON.

WM. H. WATKINS,
A. F. GADRNER, SR.,
R. C. STOVALL,
A. F. GARDNER, JR.,
H. T. ODOM,
Attorneys for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

NO.———.

COLUMBUS & GREENVILLE RAILWAY CO., ET AL., PETITIONERS,

VS.

W. J. MILLER, STATE TAX-COLLECTOR, FOR THE USE OF MISSISSIPPI LEVEE DISTRICT

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of the Columbus & Greenville Railway Company, A. T. Stovall and A. F. Gardner, Sr., Petitioners, respectfully shows unto this Court:

A.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

The Mississippi Levee District was organized Chapter 1, Mississippi Laws of 1865. The territory comprised therein included the counties of Washington, Bolivar and Issaquena. Due to the creation of new counties, it now also comprises parts of Sharkey, Warren and Humphreys counties.

Section 237 of the Mississippi State Constitution is in the following language:

"Section 237. The legislature shall have full power to provide such system of taxation for said levee districts as it shall, from time to time, deem wise and proper."

The Columbus & Greenville Railway Company is a Mississippi corporation, hereinafter referred to as the company, operating a line of railroad from Columbus, Mississippi, in a westerly direction to Greenville, Washington County, Mississippi, a distance of 69 miles. It runs across the levee district at right angles from the Mississippi River, a distance of 18.41 miles.

Section 1, Chapter 282, Mississippi Laws of 1914, is in the following language:

"Section 1. Be it enacted by the Legislature of the State of Mississippi, That Chapter one hundred and twenty-five of the Acts of 1908 be and the same is hereby amended so as to read as follows:

"That Chapter 7 of the Acts of 1886 be and the same is hereby amended so as to read as follows:

"That for the purpose of contributing to the expense of building, maintaining and repairing levees in the Mississippi levee district, and of paying the debts and liabilities incurred therefor, by the Board of Mississippi Levee Commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, to-wit: Upon each and every mile of the main or trunk line of all broad or standard guage railroads, not including side tracks or switches, the sum of

$350.00 per annum; upon each and every mile of narrow guage railroad or railroads of less width than standard guage, not including side tracks or switches, the sum of $87.50 per annum; and upon each and every mile of broad or standard guage railroads, not used and operated as a main or trunk line, but constituting and used as a feeder to a branch or a main or trunk line, or to connect such main or trunk line with some other system, the sum of $210.00 per annum; provided that no railroad or branch railroad shall be subject to taxation under this act while the same is in process of construction, but if any part thereof shall be used for profit, that part so used shall be taxed, although the whole of said railroad or branch may not be finished."

Section 1, Chapter 259, Mississippi Laws of 1926, is in the following language:

"That for the purpose of contributing to the expense of building, maintaining and repairing levees in the Mississippi levee district, and of paying the debts and liabilities incurred thereof, by the Board of Mississippi Levee Commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, to-wit: Upon each and every mile of the main or trunk line of all broad or standard guage railroads, not including side tracks or switches, the sum of $350.00 per annum; upon each and every mile of narrow gauge railroad or railroads of less width than standard gauge, not including side tracks or switches, the sum of $87.50 per annum; and upon each and every mile of broad or standard guage railroads, not used and operated as a main or trunk line, but constituting and used as a feeder to

or a branch of a main or trunk line, or to connect such main or trunk line with some other system, the sum of $210.00 per annum; provided, that no railroad or branch railroad shall be subject to taxation, under this act while the same is in process of construction, but if any part hereof shall be used for profit, that part so used shall be taxed, although the whole of said railroad or branch may not be finished; provided further that the tax per mile per annum on the main line of any railroad company which does not own in excess of twenty-five miles of railroad in the Mississippi levee district shall be $50.00 per annum."

That for the years 1926 and 1927, since the main line of the Columbus & Greenville Railway Company did not exceed twenty-five miles in the levee district, it paid to the tax collector thereof the sum of $50.00 per mile per annum, in accordance with the provisions of the Act of 1926. R. 60.

The respondent, W. J. Miller, State-Collector, for the use of the Mississippi Levee District, is an officer whose duty it is under the statutes of the State of Mississippi to enforce payment of past due taxes and other obligations of the State of Mississippi, or any subdivision thereof, including the Mississippi Levee District.

Upon the 31st day of July, 1928, the state tax-collector filed suit in the circuit Court of Montgomery County, Mississippi, for the recovery of privilege taxes payable to the Mississippi Levee District under Chapter 282, Mississippi Laws of 1914, aforesaid, at the rate of $350.00 per mile. The plaintiff alleged that Chapter 259, Mississippi Laws of 1926, was invalid, in that the same was adopted by the Leg-

islature of the State of Mississippi in disregard of Section 234 of the Constitution of the State of Mississippi. R. 3.

To which declaration, the company demurred on the ground that the plaintiff's declaration revealed that it had discharged all liability for privilege taxes imposed upon it by Chapter 259, Mississippi Laws of 1926, which repealed Section 1, Chapter 282, Mississippi Laws of 1914.

The trial court sustained the demurrer and dismissed the action.

On appeal by the state tax-collector to the Supreme Court of the State of Mississippi, the court held that Chapter 259, Mississippi Laws of 1926, violated the Fourteenth Amendment to the Constitution of the United States, and was void; and that the company owed to the levee district the mileage tax provided in Chapter 282, Mississippi Laws of 1914. The case is reported, *Miller State Tax-Collector, v. Columbus & Greenville Railway Co.*, 122 So. 366, 154 Miss. 317. The Court used the following language at page 323:

"Chapter 259, Laws of 1926, divides railroads into two classes: First, railroads not having more than twenty-five miles of railroad in the levee district; and, second, all other railroads theerin. The ground of the appellant's contention is that this classification has no reasonable relation to the purpose for which the statute was enacted, but is arbitrary and unreasonable, and therefore in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution. This is so manifestly correct that the citation of authorities therefor would be su-

pererogatory. It will not be necessary for us to decide whether this results simply in the proviso of Chapter 259, Laws of 1926, being void, or in the whole statute being void, for in either event the tax which the appellee will have to pay will be the same, that is, three hundred and fifty dollars per annum on each mile of its railroad in the levee district."

The case was remanded to the Circuit Court of Montgomery County, Mississippi, and among other pleas, the company pleaded that Chapter 259, Mississippi Laws of 1926, was consistent with the Fourteenth Amendment to the Constitution of the United States and a valid law thereunder. R. 8.

Said plea contained the following additional language:

"The said defendant having discharged its liabilities to said Mississippi Levee District under said Act, now sets up, alleges and avers that it has acquired, and now has, under the Fourteenth Amendment to the Constitution of the United States, the right, privilege and immunity from further liability for taxes to the said Mississippi Levee District."

The company's plea further alleged that to hold Chapter 259 Laws of 1926, invalid and enforce Chapter 282, Mississippi Laws of 1914, under the facts and circumstances shown by the testimony, against the company, would render such last mentioned act violative of the Fourteenth Amendment to the Constitution of the United States, in that the same would deprive the company of due process of law, and deny to it the equal protection of the law. R. 14.

The case went to trial on the facts, and it appeared that there were but two railroads at the time of the passage of the Act of 1926 in the levee district operating standard gauge main lines:

(a) The Yazoo & Mississippi Valley Railroad Company, an interstate carrier, running from New Orleans in the State of Louisiana, to Memphis in the State of Tennessee, forming part of the great Illinois Central System. That the said Yazoo & Mississippi Valley Railroad Company operated its main line north and south through the levee district, parallel with the Mississippi River, a distance of 117.15 miles; that, owing to the exposure to the flood waters of the Mississippi River, it required and had a road bed six feet higher and four feet wider than that of the Columbus & Greenville Railway Company; that it had and required heavier rails, depots, shops and buildings,, all of which were modern in every respect.

(b) The Columbus & Greenville Railway Company, petitioner, an intrastate railroad, running through the district across Washington County, Mississippi, to the Mississippi River at right angles from the Mississippi River, a distance of 18.41 miles, the equipment of which was old, dilapidated, worn out, its locomotives not having exceeding one-fourth of the capacity of the locomotives of the Yazoo & Mississippi Valley Railroad Company.

The company also introduced other evidence, tending to show the substantial difference between the two railroads, which were the only two affected; and, also, introduced

other evidence tending to show substantial differences which would exist in respect to the operation of any railroad at right angles from the river and one running through the entire district parallel with the river. R. 24; R. 46-50.

Under Chapter 118, Mississippi Laws of 1926, being Section 7740 of Hemingway's Mississippi 1927 Code, the Railroad Commission of the State of Mississippi was authorized to classify railroads for payment of state privilege taxes. A copy of the act is made appendix hereto.

The company offered to prove that under this act, the Railroad Commission of the State of Mississippi classified the Yazoo & Mississippi Valley Railroad Company as a first class railroad and classified the Columbus & Greenville Railway as a third class railroad.

Objection was made to the appellee to the introduction of the testimony, and the same was sustained. R. 51.

The company also offered to prove that the tax commissioners of the State of Mississippi, in assessing railroad property in the State of Mississippi for ad valorem taxes, fixed the valuation of the company's property at one thousand dollars per mile; while that of the Yazoo & Mississippi Valley Railroad Company was assessed at thirty-two thousand dollars per mile. The admission of this testimony was likewise objected to by the appellee and excluded. Judgment was entered against the company for taxes in accordance wit hthe provisions of the act of 1914 for the full amount sued for; that is to say, a tax of $350.00 per mile, crediting the company with $50.00 per mile paid by it. R. 18.

The Coulmbus & Greenville Railway Company prosecuted its appeal to the Supreme Court of the State of Mississippi, and by appropriate assignment of error, reasserted the validity of the Act of 1926 under the Fourteenth Amendment to the Constitution of the United States, and that said railroad company, appellant, was deprived of its property without due process of law and denied the equal protection of the law by declaring said Act of 1926 invalid and enforcing against it Chapter 282 of the Mississippi Laws of 1914. R. 66.

The judgment of the Circuit Court of Montgomery County, Mississippi, complained of was affirmed. R. 76.

The court delivered the following opinion, reported 127 So. 784:

"This case is ruled by the opinion rendered on the former appeal herein, (154 Miss. 317, 122 So. 366), to which we adhere, and the evidence excluded, if competent, as to which we express no opinion, could not have changed the result. Affirmed."

Petitioners A. T. Stovall and A. F. Gardner, Sr., became sureties on the appeal bond of the railway company to the Supreme Court of the State of Mississippi from the judgment rendered in the Circuit Court of Montgomery County, Mississippi, and join in this petition by reason thereof.

B.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

The petitioners would therefore respectfully show to this Honorable Court that the decision of the Supreme Court of the State of Mississippi should be reviewed by this Honorable Court on certiorari for the following reasons, to-wit:

1. Chapter 259, Mississippi Laws of 1926, does not violate the Fourteenth Amendment to the Constitution of the United States, but is consistent therewith and is a valid and legal enactment. That under such act, as applicable to the Fourteenth Amendment to the Constitution of the United States, the said railway company, petitioner, had discharged its full liability to the Mississippi Levee District, and was immune and free from further liability for privilege taxes sued for.

2. That the Supreme Court of the State of Mississippi invalidated the Act of 1926, reinstated the Act of 1914, and by so doing, deprived petitioners of their rights under the Fourteenth Amendment to the Constitution of the United States, in that their property was taken without due process of law and they were denied the equal protection of the law.

3. The classification of railroads under Chapter 259, Mississippi Laws of 1926, was consistent with the Fourteenth Amendment to the Constitution of the United Sttes, rested upon sound and reasonable differences, and was not shown to be in any manner arbitrary.

4. The Supreme Court of the State of Mississippi committed error in holding against the validity of Chapter 259, Mississippi Laws of 1926.

5. The Supreme Court of the State of Mississippi committed error in holding valid and enforcing against plaintiffs in error Chapter 282, Mississippi Laws of 1914.

6. The Supreme Court of Mississippi has decided Federal questions of substance not heretofore determined by this Court, and has decided them in a way not in accordance with the applicable decisions of this Court. The questions involved are novel, in that petitioners do not find in any reported case where this Court has been called upon to review the judgment of a state court where an act of the state legislature has been declared invalid as being in violation of the Fourteenth Amendment to the Constitution of the United States. The questions are important in that they involve questions of classification of railroads for state taxation, and the decision of the state court was against the validity of an act of the Mississippi State Legislature providing classification for taxation. Petitioners therefore show unto the Court that the present case is one in which it is proper for this Court to issue a writ of certiorari.

7. Petitioners believe that said judgment of the Supreme Court of the State of Mississippi is erroneous, and that this Honorable Court should require the cause to be certified to it for review and determination under the Acts of Congress in such case made and provided. Petitioners accompany the petition with one certified copy of the record in the Supreme Court of Mississippi and reference is made here to such record.

Wherefore, petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Mississippi, commanding that court to certify and send to this court for its review and determination on a day certain, to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket Columbus & Greenville Railway Company vs. W. J. Miller, State Tax-Collector, 28,555; and that said judgment of the Circuit Court of Montgomery County, Mississippi, affirmed by the Supreme Court of the State of Mississippi, may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioners will ever pray.

COLUMBUS & GREENVILLE RY. CO.,
A. T. STOVALL,
A. F. GARDNER, SR.,
By W. H. WATKINS,
A. F. GARDNER, JR.,
R. C. STOVALL,
Counsel for Petitioners.

In The Supreme Court of The United States

OCTOBER TERM, 1929.

COLUMBUS & GREENVILLE RAILWAY CO., ET AL., PETITIONERS,

VS.

W. J. MILLER FOR THE USE OF MISSISSIPPI LEVEE DISTRICT, RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINION OF THE COURT BELOW.

Miller, State Tax-Collector, Etc., Vs. C. & G. Ry. Co., 122 So. 366, 154 Miss. 317; Columbus & Greenville Railway Co. Vs. W. J. Miller, State Tax-Collector, Etc., 127 So. 784.

II.

JURISDICTION.

1. Petitioners claim that this Court has jurisdiction to issue writ of certiorari to the Supreme Court of the State of Mississippi under Paragraph (b), Section 344, Title 28, U. S. C. A., as amended by the Act February 13, 1925; said paragraph being in the following language:

"(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision

could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States; or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph."

2. The date of the judgment to be reviewed is April 21, 1930.

3. In this case there was drawn in question the validity of Chapter 259, Mississippi Laws of 1926, on the ground of its being repugnant to the Fourteenth Amendment to the Constitution of the United States, and the decision of the state court was against the validity of the act.

In said case also, the petitioners set up and presented claim, right, privilege or immunity under the Constitution of the United States, in that they asserted and claimed that, as applied to the Fourteenth Amendment to the Constitution of the United States, Chapter 259, Mississippi Laws

of 1926, was valid and afforded them immunity from liability. The decision of the Supreme Court of the State of Mississippi was against the right, privilege and immunity set up and claimed. The petitioners claimed and asserted in the state court that if Chapter 259, Mississippi Laws of 1926, should be held invalid as violating the Fourteenth Amendment to the Constitution of the United States, and that Chapter 282, Mississippi Laws of 1914, should be enforced against them under the facts and circumstances shown, they would be deprived of their property without due process of law and denied the equal protection of the law.

The Petitioners cite as sustaining the Jurisdiction of this court the following cases:

4. (a) The petitioners contend that Chapter 259, Mississippi Laws of 1926, is, as applied to the Fourteenth Amendment to the Constitution of the United States, valid and assert immunity from further liability. The petitioners further assert that if said act should be held invalid and liability imposed on the railway company by reason of Chapter 282, Mississippi Laws of 1914, petitioners will be deprived of their property without due process of law and denied the equal protection of the law, which is reviewable by certiorari: *Grayson vs. Harris*, 267 U. S. 352, 69 L. Ed. 652; *Fullerton vs. Northern Pac. R. Co.*, 266 U. S. 435, 69 L. Ed. 367; *Bullock vs. State of Florida*, 254 U. S. 513, 65 L. Ed. 380; *Ward vs. Love County*, 253 U. S. 17, 64 L. Ed. 751; *Ireland vs. Woods*, 246 U. S. 323, 62 L. Ed. 745; *Philadelphia & Reading Coal Co., vs. John Gilbert*, 245 U. S. 162, 62 L. Ed. 221.

(b) In this case there was brought in question, as being in violation of the Fourteenth Amendment to the Constitution of the United States, Chapter 259, Mississippi Laws of 1926. We can find no reported case where this Court has reviewed the action of the highest appellate court of a state where the act of a state legislature was brought in question and the decision against the validity of the act. The question appears to be a novel one.

(c) The graduated classification of railroads for levee taxes adopted by the Mississippi State Legislature in the Act of 1926 was reasonable: *Bromley vs. McCaughn*, 280 U. S.————, Adv. Ops. November 25, 1929; *Carley & Hamilton vs. Snook*, 280 U. S. ————, Adv. Ops. February 24, 1930; *Ohio Oil Co. vs. E. A. Conway*, 280 U. S. ——, Adv. Ops., decided April 14, 1930; *Middleton vs. Power & Light Co.*, 249 U. S. 152, 63 L. Ed. 527; *Wilson vs. New*, 243 U. S. 332, 61 L. Ed. 755; *Iron Mountain R. R. Co. vs. Arkansas*, 240 U. S. 518, 60 L. Ed. 776; *Citizens' Telephone Co. vs. Fuller*, 229 U. S. 322, 57 L. Ed. 1206; *C. & O. R. R. Co. vs. Conley*, 230 U. S. 513, 57 L. Ed. 1597; *New York & New Haven R. Co. vs. New York*, 165 U. S. 628, 41 L. Ed. 853; *Dow vs. Beidelman*, 125 U. S. 680, 31 L. Ed. 841; *Chicago & B. R. Co. vs. Cutts*, 94 U. S. 155, 24 L. Ed. 94; Clark vs. *City of Titusville*, 184 U. S. 329, 46 L. Ed. 569; *Magoun vs. Ill. Trust & Savings Bank*, 42 L. Ed. 1037, 170 U. S. 283; *Wing vs. Kirkendall*, 223 U. S. 59, 56 L. Ed. 350; *Watson vs. State*, 254 U. S. 122, 65 L. Ed. 170.

III.

FEDERAL QUESTION—HOW RAISED

(a) The Supreme Court of the State of Mississippi decided the Federal question on the first appeal, Miller State Tax-Collector, vs. Columbus & Greenville Railway Company, 122 So. 866, 154 Miss. 317. Since the Supreme Court of Mississippi decided the Federal question, it will be conclusively presumed that the same was properly raised in accordance with the rules of state practice: *Manhatten Life Ins. Co. vs. Cohen*, 234 U. S. 123, 58 L. Ed. 1245; *Sully vs. American Nat'l Bank*, 178 U. S. 289, 44 L. Ed. 1072; *Chicago, R. I. Ry. Co. vs. Perry*, 259 U. S. 548, 66 L. Ed. 1056.

(b) On remand of the case to the Circuit Court of Montgomery County, Federal questions were presented in pleadings. R. 8 14-15.

(c) On appeal to the Supreme Court of the State of Mississippi, the Federal questions were reasserted in assignment of error. R. 66.

(d) The Supreme Court of the State of Mississippi, Columbus & Greenville Railway Co., vs. Miller, Etc., 127 So. 784, reasserted its original opinion wherein the Federal questions involved were decided.

IV.

STATEMENT OF THE CASE

A full and concise statement of the facts in this case has been set forth in the petition for certiorari, and the same will not be reasserted here. Additional reference will be made to the facts in Paragraph VI.

V.

SPECIFICATION OF ERRORS.

1. The Supreme Court of the State of Mississippi committeed error in affirming the judgment of the Circuit Court of Montgomery County, Mississippi, appealed from, in this case and in rendering final judgment against petitioners upon the 21st day of April, 1930; and in so doing deprived petitioners of their property without due process of law, and denied to them the equal protection of the law provided by the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of the State of Mississippi, in failing and refusing to give to the petitioners the immunity from liability afforded by Chapter 259, Mississippi Laws of 1926, committed error and deprived them of their property without due process of law, and denied them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the State of Mississippi committed error in holding that Chapter 259, Mississippi Laws of 1926, violated the Fourteenth Amendment to the Constitution of the United States, and in holding that the classification of railroads therein provided for the purposes of levee taxation was arbitrary and unreasonable and violative of the Fourteenth Amendment to the Constitution of the United States.

4. The Supreme Court of the State of Mississippi committed error in holding that Chapter 259, Mississippi Laws of 1926, was not a valid and enforcible statute as applied

to the Fourteenth Amendment to the Constitution of the United States and Paragraph 1 thereof, and in holding that the same did not constitute a complete defense on the part of the said petitioners in said cause.

5. The Supreme Court of the State of Mississippi committed error in reinstating and in holding applicable to the petitioners Chapter 282, Mississippi Laws of 1914, and in applying and enforcing the same against the petitioners in this case, and in so doing, brought said Chapter 282, Mississippi Laws of 1914, in conflict with, and caused the same to violate the Fourteenth Amendment to the Constitution of the United States, in that petitioners were thereby deprived of their property without due process of law and denied the equal protection of the law.

6. The Supreme Court of the State of Mississippi committed error, deprived the petitioners of their property without due process of law, and denied to them the equal protection of the law, in affirming the action of the Circuit Court of Montgomery County, Mississippi, in excluding the testimony of J. H. Rigby and Z. P. Hawkins in respect to the very great dissimilarity between the Yazoo & Mississippi Valley Railroad Company, the only other standard guage main line railroad operating in the levee district, and the petitioner, the Columbus & Greenville Railway Company.

7. The Supreme Court of the State of Mississippi committed error in affirming the action of the Circuit Court of Montgomery County, Mississippi, in failing and refusing to permit petitioners to prove that the Railroad Commis-

sion of the State of Mississippi, which classified railroad companies operating in the State of Mississippi, had itself classified the Yazoo & Mississippi Valley Railroad Company as a first class railroad and classified the Columbus & Greenville Railway Company as a third class raidroad, and graduated the classes accordingly.

8. The Supreme Court of the State of Mississippi committed error in applying the Fourteenth Amendment to the Constitution of the United States under the facts in this case to Chapter 259, Mississippi Laws of 1926, thereby depriving the petitioners of their property without due process of law and denying to them the equal protection of the law.

VI.
ARGUMENT.

(a) It is the function of this Court to determine as to whether or not Chapter 259, Mississippi Laws of 1926, violated the Fourteenth Amendment to the Constitution of the United States, which office upon its part, can not be delegated to the State Court.

In this case, appellee, by the allegation of its declaration, and in its brief and argument, attacked certain sections of the Constitution of the State of Mississippi, and urged upon the Supreme Court of the State of Mississippi that Chapter 259, Mississippi Laws of 1926, was void and should be disregarded, and that the Act of 1914, Chapter 282, should be enforced against the petitioners, because it was claimed that such Act of 1926 violated, and was in conflict

with, certain sections of the Constitution of the State of Mississippi. The Supreme Court of the State of Mississippi is the final interpreter of its Constitution and statutes. It gave due consideration to the argument of appellee's counsel and decided that, so far as the Constitution of the State of Mississippi was concerned, Chapter 259, Mississippi Laws of 1926, was a valid law and that, as applied to the Constitution of the State of Mississippi, the Columbus & Greenville Railway Company had paid all the taxes demanded and required of it under its laws; and that Chapter 259, Mississippi Laws of 1926, could not be stricken down by reason of any provision contained in the Constitution of the State of Mississippi. That being true, the Supreme Court of the State of Mississippi then applied the Fourteenth Amendment to the Constitution of the United States and held, as appears from its opinion, that Chapter 259, Mississippi Laws of 1926, was based upon an arbitrary classification.

As to whether or not chapter 259, Mississippi Laws of 1926, violated the Fourteenth Amendment to the Constitution of the United States, and as to whether or not petitioners were deprived of their property without due process of law by the reinstatement and enforcement against them of Chapter 282, Mississippi Laws of 1914, are not matters of state law, but are questions involving a construction of the Fourteenth Amendment to the Constitution of the United States, which can only be finally determined by this Court.

In the case of *Illinois Central R. R. Co., vs. Messina*, 240 U. S. 395, 60 L. Ed. 709, there was presented a case in

which the Supreme Court of the State of Mississippi had decided a question involving interstate commerce. Having decided the question erroneously, this Court felt called upon to reverse the decision, using the following language:

"We are of the opinion therefore that the act was construed wrongly. Assuming, as it has been assumed, that the defendant's liability was governed otherwise by state law, it seems doubtful under the state decisions whether the plaintiff would have been allowed to recover had the court been of opinion that the act of Congress made his presence on the train illegal. *Western U. Teleg. Co., vs. McLaurin*, ——— Miss., ———, L. R. A. 1915C, 487, 66 So. 739. And although there are expressions in the opinion below that raises a doubt, the fact that the supreme court thought it necessary to construe the act indicates that the construction was material to the result. For this reason the judgment must be reversed."

In the case of *Ward vs. Love*, 253 U. S. 17, 64 L Ed. 751, this Court used the following language:

"The right to the exemption was a Federal right, and was specially set up and claimed as such in the petition. Whether the right was denied, or not given due recognition, by the supreme court, is a question as to which the claimants were entitled to invoke our judgment, and this they have done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-Federal grounds of decision that were without any fair or substantial support."

To the same effect, see *Truax vs. Corrigan* 257 U. S. 315, 66 L. Ed. 254.

(b) The classification provided for in Chapter 259, Mississippi Laws of 1926, is reasonable and consistent with the Fourteenth Amendment to the Constitution of the United States.

Chapter 259, Mississippi Laws of 1926, is a legislative classification of railroads for taxation in the levee district for the purpose of creating a fund to construct and maintain levees against the flood waters of the Mississippi River in the district. Submitting the act to an analysis, the classification is as follows:

Class 1. Each and every main or trunk line standard guage railroad more than 25 miles in length, exclusive of side tracks and switches, $350.00 per mile per annum.

Class 2. On each narrow gauge railroad less than standard, exclusive of tracks or switches, not exceeding twenty-five miles in length, $87.50 per mile per annum.

Class 3. Upon each and every standard gauge railroad not operating a trunk line, but operating a railroad used as a feeder or branch of a main or trunk line, less than twenty-five miles, $210.00 per mile per annum.

Class 4. Main line of any railroad which does not own or operate in excess of 25 miles in the Mississippi levee district $50.00 per mile per annum.

The tax being uniform in each class.

It must be borne in mind that the Fourteenth Amendment to the Constitution of the United States does not require equality in taxation; it merely prohibits arbitrary distinctions, which may not be supported from any standpoint upon a reasonable basis. *Shaffer vs. Carter*, 252 U. S. 37, 64 L. Ed. 445; *Ft. Smith Light & Traction Co. vs. Board of Improvement*, 274 U. S. 387, 71 L. Ed. 1112; *Stebbins vs. Riley*, 268 U. S. 137, 69 L. Ed. 884.

In discussing the question of classification, the same may be approached from two standpoints:

(1) The actual situation which existed at the time of the passage of the act of 1926. The proof indisputably showed that there were but two standard guage main line railroads in the levee district at the time of the passage of the act and up to the trial of this case; one the Yazoo & Mississippi Valley Railroad, an interstate carrier, forming part of the great Illinois Central system, operating a railroad from New Orleans in the State of Louisiana to Memphis in the State of Tennessee, running north and south through the entire district, parallel with the Mississippi River, approximately 117.15 miles, its vast properties exposed one hundred per cent. to the hazard of an overflow of the waters of the Mississippi River, requiring superior construction of roadbeds, bridges, trestles, its equipment the last word in modernity, its depots and buildings modern and in excellent state of repair, its locomotive engines propelling freight trains of ninety to one hundred cars, a railroad with a capital stock of approximately Twenty-Five Million Dollars, which is unpurchasable at any price; in other words, a standard modern railroad of vast values and

up to date in every respect, operating over its line a number of passenger and freight trains daily.

(2) The Columbus & Greenville Railway Company, petitioners herein, owning 169 miles of railroad in the State of Mississippi, operating approximately 69 miles, running at right angles from the Mississippi River east and west, approximately 18 miles in the levee district, a railroad which emerged from receivership in 1923, operating its line through a nonproductive hill section of the state, the construction of its road being old, wornout, dilapidated and inferior; its buildings and operating equipment in like condition, its locomotive engines having approximately one-fourth of the propelling capacity of the Yazoo & Mississippi Valley Railroad Company operating through a highly productive delta section; the Columbus & Greenville Railway Company having its western terminus at Greenville, Washington County, Mississippi, in the levee district, only forty per cent. of the district lying north of Greenville, and its exposure to the currents of the Mississippi River proportionately reduced, which required a less efficient and expensive road bed and construction. These facts were introduced without objection, and will appear in testimony of J. H. Rigby, R. 24-44; Z. P. Hawkins, R. 46-50.

In addition to the foregoing facts, the petitioner offered to prove by certified copies of the assessment roll of the Mississippi State Tax Commission, the body having authority to fix values for taxation of railroad properties in Mississippi, that the Yazoo & Mississippi Valley Railroad was assessed for ad valorem taxation in the levee district at thirty-two thousand dollars per mile, and that the Columbus & Greenville Railway Company at one thousand dollars

per mile. This testimony was excluded by the trial court, and the Supreme Court of the State of Mississippi held that the testimony was not relevant or competent.

The railroad Commission of the State of Mississippi was authorized under Chapter 118, Mississippi Laws of 1926, to classify railroads in Mississippi for the purpose of fixing privilege taxes to be paid for the general revenues of the state. A copy of this act is made an appendix hereto. The Railroad Commission classified the Columbus & Greenville Railway Company as a third class railroad and the Yazoo & Mississippi Valley Railroad as a first class railroad. The Supreme Court of the State of Mississippi likewise held this testimony immaterial. We respectfully submit, however, that in determing the constitutionality of the Act of 1926, we are entitled to have the facts excluded treated as established. *Fairmount Creamery vs. Minn.*, 274 U. S. 1, 71 L. Ed. 893. The Court in that case said, page 895:

> "The trial court excluded this evidence as immaterial, and the supreme court approved. We may, therefore, treat the facts stated as though established and held to have no bearing on the question of guilt or the validity of the enactment."

In the case of *Railroad Co., vs. The State*, 70 So. 555, 110 Miss. 299, the Supreme Court of the State of Mississippi held that it was without authority to review the action of the Railroad Commission in classifying railroads, that the question was legislative in nature and not judicial.

There is no constitutional objection to an act under the Fourteenth Amendment to the Constitution of the United

States because applicable only to one company. In other words, the fact that there was but one standard gauge main line railroad operating less than twenty-five miles in the district in no manner rendered the act violative of the Fourteenth Amendment to the Constitution of the United States. *Durham Public Service Co., vs. City of Durham*, 261 U. S. 149, 67 L. Ed. 580.

The case of *Ft. Smith Light & Traction Co., vs. Board of Improvement*, 274 U. S. 387, 71 L. Ed. 1112, involved an act imposing upon a street railway company obligation to pave at its own cost certain streets. The act was general in its nature, but applicable to only one company. On objection thereto as violating the Fourteenth Amendment to the Constitution of the United States, this Court used the following language:

> "If a state may delegate to a municipality power to require paving by a street railway located within its limits, (Durham Pub. Ser. Co. vs. Durham, supra), we perceive no reason why it may not, by a legislative act, make a like requirement limited to a single municipality."

This is in accord with the decisions of the Supreme Court of the State of Mississippi construing its own statutes. In the case of *Memphis & C. Ry. Co. vs. Bullen*, 121 So. 826, 154 Miss. 536, the court used the following language:

> "Where a law is broad enough to reach every portion of the state and to embrace within its provisions every person and thing distinguished by marked characteristics of sufficient importance

to make them clearly a class by themselves, it is not a local or special law, but a general law, 'even though there be but one member of the class or one place on which it operates.' 25 R. C. L., Sec. 66, p. 815, at page 818. In the case of *Toombs vs. Sharkey*, (140 Miss. 676), 106 So. 273, at page 275, the language above quoted from 25 R. C. L., Sec. 66, p. 818, is quoted with approval."

(3) There is still another method of approaching the question, that adopted by the Supreme Court of the State of Mississippi of holding incompetent and irrelevant all evidence relating to the actual situation, and determining the question from a mere inspection of the act itself, though we submit, in the light of the preceding authorities, that we are entitled to have taken as true the facts offered to be proved, and the question of the constitutionality of the act as applied to the Fourteenth Amendment to the Constitution of the United States may be made to depend upon the peculiar facts in each case. *Fairmont Creamery Co. vs. State of Minn.*, 274 U. S. 1, 71 L. Ed. 893; *Truax vs. Corrigan*, 257 U. S. 312, 66 L. Ed. 254; *Shaffer vs. Carter*, 252 U. S. 37, 64 L. Ed. 445; *Wagner vs. Covington*, 251 U. S. 95, 64 L. Ed. 157; *Gilligan vs. Covington*, 251 U. S. 104, 64 L. Ed. 168; *American Mfg. Co. vs. St. Louis*, 250 U. S. 459, 63 L. Ed. 1084.

Passing, however, to the view which was taken by the Supreme Court of the State of Mississippi of the statute as being violative of the Fourteenth Amendment to the Constitution of the United States, we respectfully submit that the state court not only attempted to exclude testimony offered by the Railway Company to show the dissimilarity

in conditions existing between the two carriers, but no evidence of any kind was offered attacking the reasonableness of the classification. We respectfully submit that the burden of proof rested upon the opposing litigant in this case to introduce facts showing the unreasonableness of the classification, and if none appeared, it is only in very rare cases that an act should be declared violative of the Fourteenth Amendment to the Constitution of the United States without the aid of evidence tending to show an improper classification.

See the most admirable address of Justice Harlan F. Stone, Associate Justice of this Court, before the American Bar Association in Seattle, 1928.

In the case of *Ft. Smith Light & Traction Co. vs. Board of Improvement*, 274 U. S. 387, 71 L. Ed. 1112, this Court said:

> "We may not assume in the absence of proof that such differences do not exist. *Erb vs. Morasch*, 177 U. S. 584, 44 L. Ed. 897, 20 Sup. Ct. Rep. 819; *Middleton vs. Tex. P. & L. Co.*, 248 U. S. 152, 63 L. Ed. 527, 39 Sup. Ct. Rep. 227; *Swiss Oil Corp. vs. Shanks*, 273 U. S. 407, 47 Sup. Ct. Rep. 393.
>
> "There are no facts disclosed by the record which would enable us to say that the legislative action with which we are herein concerned was necessarily arbitrary or unreasonable, or justify us in overruling the judgment of the State Court that it was reasonable. *Durham Pub. Service Co., Durham*, supra, (67 L. Ed. 585, 43 Sup. Ct. Rep. 290). Judgment affirmed."

In the case of *Whitney vs. California*, 274 U. S. 357, 71 L. Ed. 1095, this Court said:

> "One who assails the classification must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Lindsley vs. Natural Carbonic Gas Co.*, 220 U. S. 62, 78, 55 L. Ed. 370, 377, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160, and cases cited."

In the case of *Weaver vs. Palmer*, 270 U. S. 402, 70 L. Ed. 654, this Court used the following language:

> "Legislative determinations express or implied are entitled to great right; but it is always open to interested parties to show that the legislature has transgressed the limits of its power. *Pa. Coal Co. v. Mahon*, 260 U. S. 393, 413, 67 L. Ed. 322, 325, 28 A. L. R. 1321, 43 Sup. Ct. Rep. 158. Invalidity may be shown by things which will be judicially noticed. *Quong Wing v. Kirkendall*, 223 U. S. 59, 64, 56 L. Ed. 350, 352, 32 Sup. Ct. Rep. 192), or by facts established by evidence. The burden is on the attacking party to establish the invalidating facts. See Minnesota Rate Cases, (Simpson vs. Shepard), 230 U. S. 352, 452, 57 L. Ed. 1511, 1563, 48 L. R. A. (N. S.) 1151, 33 Sup. Ct. Rep. 729, Ann. Cas. 1916A, 18.'

In the case of Dominion Hotel vs. State of Arizona, 249 U. S. 265, 63 L. Ed. 597, this Court said:

> "The only question is whether we can say on our judicial knowledge that the legislature of Arizona could not have had any reasonable ground for believing that there were such public considerations for the distinction made by the present law. The deference due to the judgment of the legisla-

ture on the matter has been emphasized again and again. *Hebe Co. vs. Shaw*, 248 U. S. 297, 303 ante, 255, 258, 39 Sup. Ct. Rep. 125. Of course this is especially true when local conditions may affect the answer,—conditions that the legislature does, but that we can not know. *Thomas Cusack Co. vs. Chicago*, 242 U. S. 526, 530, 531, 61 L. Ed. 472, 475, 476, L. R. A. 1918A, 136, 37 Sup. Ct. Rep. 190, Ann. Cas. 1917C, 594."

In the case of *Middleton vs. R. R. Co.*, 249 U. S. 152, 63 L. Ed. 527, this Court said:

> "The burden being upon him who attacks a law for unconstitutionality, the courts need not be ingenious in searching for grounds of distinction to sustain a classification that may be subjected to criticism."

In the case of *Rast, Tax Colector, vs. Vandeman*, 240 U. S. 342, 60 L. Ed. 679, this Court held that if any state of facts could be conceived that would sustain the law, the existence of such facts must be assumed. The Court used the following language:

> "It is established that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78, 55 L. Ed. 369, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160. It makes no difference that the facts may be disputed or their effect opposed by argument and opinion or serious strength. It is not within the competency of the courts to arbitrate in such contrariety. *C. B. & Q. R. Co. v. McGuire*, 219

U. S. 549, 55 L. Ed. 328, 31 Sup. Ct. Rep. 259; *German Alliance Ins. Co. v. Lewis*, 233 U. S. 389, 413, 414, 59 L. Ed. 1011, 1022, 1023, L. R. A. 1915C, 1189, 34 Sup. Ct. Rep. 612; *Price v. Illinois*, 238 U. S. 446, 452, 59 L. Ed. 1400, 1405, 35 Sup. Ct. Rep. 892."

As preliminary to the authorities which we shall cite upon the question of classification, we direct the attention of the Court to the rule that classification need not depend on scientific accuracy. *Orient Ins. Co. v. Daggs*, 172 U. S. 557, 43 L. Ed. 552.

Nor is the Court, in determining the question, concerned with questions of lack of wisdom, crudeness, impolicy, or even injustice in the state law. *Heath, etc., Mfg. Co. v. Worst*, 207 U. S. 338, 52 L. Ed. 236.

We now propose to show the Court that very great latitude is allowed a state legislature in the matter of classification; that it is only necessary that such classification be not arbitrary and not without reasonable basis; that this rule is especially applicable and more liberal as applied to the internal taxation laws of a state.

In the case of *Bromley v. McCaugn, Collector of Revenue*, 280 U. S.——, Adv. Ops. Nov. 25, 1929, this Court used the following language:

> "It is suggested that the schemes of graduation and exemption in the present statute, by which the tax levied upon donors of the same total amounts may be affected by the size of the gifts to individual donees, are so arbitrary and unrea-

sonable as to deprive the tax payer of property without due process. But similar features of state death taxes have been held not to infringe the 14th Amendment, since they bear such a relation to the subject of the tax as not to 'preclude the assumption that the legislature in enacting the taxing statute, did not act arbitrarily or without the exercise of judgment or discretion which rightfully belong to it'. *Stebbins v. Riley*, supra, (268 U. S. 145, 69 L. Ed. 889, 44 A. L. R. 1454, 45 Sup. Ct. Rep. 424). No more can they be a basis for holding that the graduation and exemption features of the present statute violate the 5th Amendment."

In the case of *Carley & Hamilton v. Snook*, 280 U. S. ——, Adv. Ops., Feb. 24, 1930, there was involved the construction of an act of the State of California, imposing a tax upon motor vehicels, which exempted from the operation of the act such vehicles weighing less than three thousand pounds. The classification was justified in the following language:

"Only a word need be said of petitioner's contention that the exemption of all vehicles weighing less than 3000 pounds, although their loaded weight may be much more than vehicles not exempt, infringes the equal protection clause of the 14th Amendment and the similar Sec. 21 of Article 1 of the State Constitution. That the legislature may graduate the fees according to the propensities of the vehicles to injure or to destroy the public highways, and may exempt those with respect to which this tendency is slight or nonexistent, can not be doubted. We may not assume that weighing less than 3000 pounds, with loads which

they usually carry, are not of this class, or that vehicles weighing more than 3000 pounds with their accustomed burden added do not have this tendency. It is for the legislature to draw the line between the two classes.

In the case of *Stebbins v. Riley*, 268 U. S. 137, 69 L. Ed. 884, this Court upheld the validity of a statute fixing inheritance tax which refused to permit deduction of amount paid the Federal Government for inheritance tax as applied to residuary legatees.

In the case of *Iron Mountain R. R. Co. v. Arkansas*, 240 U. S. 518, 60 L. Ed. 776, there was presented to the court for review an act of the State of Arkansas, which forbade a railroad company from conducting switching operations across public highways in cities of first and second class, with a switching crew of less than one engineer, a fireman, a foreman and three helpers. The act exempted therefrom railroads less than one hundred miles in length. The court held the classification was reasonable, using the following language:

> "The other grounds are in effect disposed of by prior decisions.
>
> "In the case of *Chicago, R. I. & P. R. Co. v. Arkansas*, 219 U. S. 453, 55 L. Ed. 290, 31 Sup. Ct. Rep. 275, a statute of Arkansas was considered which required freight trains to be equipped with crews consisting of an engineer, a foreman, a conductor and three brakemen 'regardless of any modern equipment or automatic couplings and air brakes.

"The statute did not apply to railroads whose line or lines did not exceed fifty miles in length, nor to any railroad, regardless of length of its line, where the freight train should consist of less than twenty-five cars. The statute was sustained on the authority of prior cases against charges of conflict with the 14th Amendment and the Commerce Clause of the Constitution. We need not cite the cases relied on or repeat the argument of the court. In that case, as in this, there was controversy in the testimony and the contentions of the parties as to the necessity of the statute. It was held, however, that the conroversy did not establish that the statute was an arbitrary exercise of power. *Armour & Co. v. North Dakota*, 240 U. S. 510, ante, 771, 36 Sup. Ct. Rep. 440."

The validity of the graduated Federal income tax was affirmed by this Court in *Tyee Realty Co. v. Anderson*, 240 U. S. 115, 60 L. Ed. 554; *Brushaber v. Union Pac. R. R. Co.*, 240 U. S. 1, 60 L. Ed. 493.

In the case of *Wilson v. New*, 243 U. S. 323, 61 L. Ed. 755, Congress passed an act establishing a permanent eight hour standard for a day's work for employees engaged in the operation of trains upon interstate railway carriers, and providing for a temporary wage regulation. The act exempted railways independently owned and not exceeding one hundred miles in length, electric street railways and electric interurban railways, from the operation of the act. The court said:

"The want of equality is based upon two considerations. The one is the exemption of certain

short line and electric railroads. We dismiss it because it has been adversely disposed of by many previous decisions."

In the case of *Citizens Teleph. Co. v. Fuller*, 229 U. S. 322, 57 L. Ed. 1206, the legislature of the State of Michigan imposed a tax on telephone companies, but exempted those whose gross receipts did not exceed $500.00 per annum. The court held that the classification was proper, using the following language:

> "It may therefore be said that in taxation there is a broader power of classification than in some other exercises of legislation. There is certainly as great a power, and the rule appellant urges can not be adopted. It is inconsistent with the principle of classification and the cases which have explained the principle and the range of its legal exercise.
>
> "In *Bell's Gap R. R. Co. v. Pa.*, 134 U. S. 232, 33 L. Ed. 892, 10 Sup. Ct. Rep. 533, it was decided that under the power of classification there might be exemption of property, dependent upon its species, and the rates of excise might be varied upon different trades and products. And it was said that it was safe to say 'that the 14th Amendment was not intended to compel the state to adopt an iron rule of taxation.' It was pointed out that to give it that effect would destroy the constitutional provision and laws of some of the states which, while enjoining uniformity of taxation, permitted exceptions which were deemed material and that 'it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of

needed and useful industries, and the discouragement of intemperance and vice; and which every state, in one form or another, deems it expedient to adopt'."

In the case of *C. & O. Ry. Co. v. Conley, Atty. Gen.*, 230 U. S. 513, 57 L. Ed. 1597, there was presented for review a statute of the State of West Virginia regulating the fare to be charged by carriers for passengers. The act did not embrace railroads of less than fifty miles in length. This Court held that the classification was reasonable, using the following language:

> "Whether the classification shall be according to the amount of passengers and freight carried or of gross or net earnings during a previous year or according to the simpler and more constant test of the length of the line of the railroad is a matter within the discretion of the legislature. If the same rule is applied to all railroads of the same class, there is no violation of the constitutional provision securing to all the equal protection of the laws."

In the case of *New York & New Haven R. R. Co. v. New York*, 165 U. S. 628, 41 L. Ed. 853, there was presented to the court for review a New York statute prohibiting a railroad company operating in the state to use stoves or furnaces inside of or suspended from passenger cars. The act excluded from the operation thereof railroads less than fifty miles in length. This Court justified the classification, using the following language:

> "In any event, there is no such discrimination against companies having more than fifty miles

of road as to justify the contention that there has been a denial to the companies named in the act of the equal protection of the laws. The statute is uniform in its operation upon all railroad companies doing business in the state, of the class to which it is made applicable."

In the case *of Erb, Receiver, v. Morasch*, 177 U. S. 584, 44 L. Ed. 897, Kansas City, Missouri, passed an ordinance regulating the speed of railroad trains in the municipality. The ordinance excluded from the operation thereof a transit railway company operated by a steam dummy engine. This court justified the classification and held the act valid.

In the case of *Clark v. Titusville*, 184 U. S. 329, 46 L. Ed. 569, this Court had under review an ordinance of a municipality in a city in Pennsylvania, imposing a license tax upon persons carrying on certain occupations in the city. Persons in different occupations paid different amounts, and persons in the same occupation were classified by maximum and minimum sales. The Court justified the classification, using the following language:

"Manifestly, there was inequality between the members of different classes, and that was conceded in the opinion, but as manifestly there was equality between the members of each class, and that equality was held to satisfy the 14th Amendment to the Constitution of the United States; and the reasoning by which that conclusion was supported is applicable to the case at bar. We met the contention accurately and squarely that there was no reasonable distinction between the classes."

In the case of *Magoun v. Ill. Trust & Sav. Bank*, 170 U. S. 283, 42 L. Ed. 1037, this Court held that an act of the State of Illinois classifying taxes for inheritance tax on difference between lineal and collateral relationship to the decedent was based upon substantial distinction and not arbitrary. The court also held that granting statutory exemptions to estates of certain sizes and amounts was a proper classification, and that the act did not violate the 14th Amendment to the Constitution of the United States.

In the case of *Watson v. Comptroller of the State*, 254 U. S. 122, 65 L. Ed. 170, this Court held that an inheritance tax law which imposed an additional tax of five per cent. upon certain investments held by the decedent, which investments were not subject to general property taxation, was based upon proper classification. This Court said that it was not necessary that the basis for classification be deducible from the nature of the things classified.

In the case of *Chicago, R. I. R. Co. v. Arkansas*, 219 U. S. 453, 55 L. Ed. 290, the State of Arkansas passed an act requiring a minimum of three brakemen for a freight train, but excluded from the operation of the act railroads less than fifty miles in length.

In the case of *Dow v. Beidelman*, 125 U. S. 680, 31 L. Ed. 841, the legislature of Arkansas passed a statute fixing the rates to be charged by railroad companies, dividing the companies into classes upon a mileage basis. This court held that there was no more reasonable, proper or consistent method of classifying a railroad than that of a mileage basis, using the following language:

"Whether the classification shall be according to the amount of passengers and freight carried, or of gross or net earnings, during a previous year, or according to the simpler and more constant test of the length of the line of the railroad, is a matter within the discretion of the legislature. If the same rule is applied to all railroads of the same class, there is no violation of the constitutional provisions securing to all the equal protection of the laws."

When we turn to state decisions, we find that classification of railroads upon a mileage basis also has some historic background. In the case of *Eureka Pipe Line Co. v. Halliman*, (W. Va.), 105 S. E. 506, the legislature of West Virginia passed an act imposing an occupation tax upon pipe lines for transporting oil and gas. According to the classification, the lines were divided into those under and equaling ten miles. The lines under ten miles were exempt from taxation, the court used the following language:

"It is uniformly held that notwithstanding, by the Constitution of a state, taxes must be levied by equal and uniform laws, and that the equal protection of the laws is guaranteed by the Fourteenth Amendment of the Federal Constitution, a state in the exercise of its taxing power may classify the subjects of taxation within its limits, and so long as the classification thus made have a reasonable basis for their existence, and the tax imposed upon each member of each class is uniform, the same does not violate such constitutional limitations," citing cases. "And, as declared by the Supreme Court of the United States in *Citizens' Telephone Co. v. Fuller*, supra, the power to classify for the purpose of taxation is broad-

er than such power of classification when exercised for other legislative purposes."

The case was reversed by this Court in *Eureka Pipe Co. v. Hallinan*, 257 U. S. 265, 66 L. Ed. 227, on entirely other grounds.

In the case of *Consumers' League v. Colorado R. Co.*, 125 Pac. 577, 53 Colo. 54, the Supreme Court of Colorado upheld an act of the State of Colorado regulating rates of carriers, which exempted from its operation railroads not exceeding twenty miles in length. The editor's note to the case indicates the prevalence of such legislation.

In the case of *Railway Co. v. Ark.*, 174 S. W. 223, the Supreme Court of Arkansas held an act valid providing for a full crew, which excluded small railroads therefrom.

The same legislation finds its place in the statutes of Mississippi. Sections 7906-7908, Hemingway's 1927 Code, requiring railroads to equip engines with headlights, exempting from the operation of the act small railroads; Sections 9278-9281 of the same Code prohibiting engines from backing in the night exempt from the operation thereof carriers engaged in hauling lumber; Sections 9284-9286, Hemingway's 1927 Code, known as the full crew law, exempt from the operation thereof railroads not over fifty miles in length. These statutes are set out in the appendix.

As a matter of fact, there will not be found in this country any case, state or federal, invalidating a statute classifying railroads upon a mileage basis. Upon the other

hand, as said by this Court in *Dow v. Beidelman*, supra, (125 U. S. 680, 31 L. Ed. 841), a classification according to a mileage basis is the simplest and most constant; therefore, the most satisfactory.

Excluding any question of the evidence introduced or offered touching the actual facts in respect to the two railroad companies involved, then, the question must be determined upon the philosophy stated by this Court in *Rast Tax Collector v. Vandeman*, supra, (240 U. S. 342, 60 L. Ed. 679): "If any state of facts reasonably can be conceived that would sustain it, then the existence of that state of facts at the time the law was enacted must be assumed."

The legislature of the State of Mississippi might very reasonably have come to the conclusion (1) that since the width of the levee district did not exceed twenty-five miles, any railroad not exceeding twenty-five miles in length would run at right angles to the river, and not parallel with it; (2) that running at right angles, such railroad would very likely come into the City of Greenville, the only city of any importance in the district; (3) that such railroad would derive its revenue from a less productive, hill section of the state, a territory presenting some geographical difficulties for construction and operation; (4) that since the road ran at right angles and not parallel to the river and running through the district, the size of the road bed as well as the character of the construction thereof would not require the same resistance to the flood waters of the Mississippi River; (5) That since the perils from the river lie principally in exposure to currents, a railroad running at right angles to the Mississippi River, coming into Greenville, Miss., or

probably any other point, would not be exposed one hundred per cent. to the current incident to the flood waters in case of a break; (6) that as an incident to small mileage, the income per mile would be proportionately reduced in the levee district; (7) that as an incident to a short railroad, the value of the property exposed to the flood waters would be vastly and proportionately reduced.

The foregoing are only a few of the differences which might suggest themselves to the legislature of the State of Mississippi in providing the classification which it did. It must be borne in mind that the classification is uniform and applicable to all cases falling within the different classifications.

CONCLUSION.

We respectfully submit that the decision of the Supreme Court of Mississippi is contrary to every decision of this or any other court dealing with the subject-matter. The questions presented are novel, in that this Court has never passed upon a case where the state court held an act invalid as violating the Fourteenth Amendment to the Constitution of the United States. The question is important, was erroneously decided, and we therefore respectfuly submit that the case is one calling for the exercise by this court of its supervisory power in order that petitioners may not be denied their rights, privileges, and immunities granted to them by Paragraph 1 of the Fourteenth Amendment to the Constitution of the United States, and that they be not denied the benefit of the immunity from further liability afforded by Chapter 259, Mississippi Laws of 1926, on the ground of

the invalidity of the same under said amendment to the Constitution of the United States; and, to that end, that a writ of certiorari should be granted, and this Court should review the decision of the Supreme Court of the State of Mississippi and reverse it.

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APPENDIX

Chapter 118, Miss. Laws, 1926, Sec. 7740, Hemingway's 1927 Code.

7740. Railroads.—186. Section 3856 of Chapter 114 of the Code of 1906, levying privilege taxes on railroads, be and the same is hereby amended so that for the purpose of levying a privilege tax on railroads, such railroads are divided into four classes: 1st, 2nd, 3rd and narrow gauge, and privilege taxes levied on them as follows:

On each railroad of the first class, per mile	$45.00
On each railroad of the second class, per mile,	25.00
On each railroad of the third class, per mile,	10.00
On each narrow gauge railroad, per mile,	2.50

The railroad commission shall, annually, on or before the first Monday in August, classify the several railroads according to their charter and the gross earnings of each, and the privilege taxes thereon shall be paid on or before the first day of December, and the findings of the said railroad commission shall be certified to the auditor of public accounts and the chancery clerk of the county through which each road or roads run; and any person or persons, natural or artificial, who shall exercise any of the privileges taxed herein, without first paying the tax and procuring the tax or license, as required by law, shall be subject to the pains and penalties imposed by Section 3894 of the Code of 1906, and to such other pains and penalties as may be otherwise provided by law. (Laws 1926, Chap. 118. In effect April 30, 1926).

APPENDIX

Sections 7906-7908, 9278-9281, 9284-9286, Hemingway's 1927 Code.

Section 7906. To require railroads to equip engines with headlights in certain cases.—1. All railroad companies, operating or doing business in this state, are hereby required to equip and maintain each and every locomotive used by such companies to run on its main line, between sunset and sunrise, with a good and sufficient headlight, which shall consume not less than three hundred watts at the arc, and with a reflector not less than eighteen inches in diameter, and to keep the same in good condition. The word "main line," as used herein, means all portions of the railway line not used as yards, spurs and side tracks. (Laws 1912, Ch. 153. In effect January 1, 1913).

Section 7907. Penalty for violations of this act.—2. Any railroad company violating this act in any respect shall be liable to indictment as for a misdemeanor in any county in which the locomotive not so equipped and maintained may run, and on conviction, shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars for each offense. (Laws 1912, Ch. 153. In effect January 1, 1913).

Section 7908. Not to apply to tramroads of logging railroads.—3. Provided this act shall not apply to tramroads, mill roads and roads engaged principally in lumber or logging transportation in connection with mills, nor to railroad systems under thirty miles long not running regular night schedules, nor to any engine, the lighting equipment of which shall have failed during the trip, if it is shown that the equipment was in efficient and effective

working condition when the trip was begun, nor to switch engines going to and returning from wrecks, or sent out on the main line to bring into a terminal a train, the engine of which has become disabled. (Laws 1912, Ch. 158. In effect January 1, 1913).

Section 9278. To prohibit backing of engines at night without light and pilot.—1. It shall be unlawful for any person or corporation owning or operating a railroad as a common carrier of passengers and freight for hire in the state, to require or permit a locomotive engine to be backed on his or its line of railroad, in the night time, unless it is provided and equipped with a pilot and headlight on the rear of its tender. (Laws 1908, Ch. 95. In effect March 16, 1908).

Section 9279. Not to apply to logging railroads. Provided, however, that the provisions of this act shall not apply to railroads whose principal business is hauling logs, nor to locomotive engines running for coal or water, doubling hills, returning from trains when broken into, going to or returning from trains in the yard limits of terminal stations, nor to engines engaged in regular switching service in yards or road engines switching at intermediate stations; nor to any locomotive engines in cases of washouts, wrecks, or when going to the assistance of engines so disabled as to block the main track of a railroad. (Laws 1908, Ch. 95. In effect March 16, 1908).

Section 9280. Penalty for violation of this act.—2. Any person or corporation violating the provisions of this act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $100 nor

more than $1000, and in addition thereto any person giving an order, permitting or requiring an employee of any railroad to violate the provisions of this act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not less than ten nor more than thirty days. (Laws 1908, Ch. 95. In effect March 16, 1908).

Section 9281. Damages for injuries resulting from violation of the provisions of this act shall be liable for injury or damage caused to any person by reason thereof, notwithstanding the negligence of the party injured or damaged. (Laws 1908, Ch. 95. In effect March 16, 1908).

Section 9284. Full crew law.—Prescribing number of employees for a train crew.—1. It shall be unlawful for any railroad propelled by steam doing business in the State of Mississippi, to operate or run over its lines, or any part thereof, or suffer or permit to be run over its lines, or any part thereof, outside of the yard limits, any passenger, mail or express train carrying passengers, or any freight train which is not manned with a crew consisting of one engineer, one fireman, one conductor, one brakeman or porter and one competent flagman. (Laws 1914, Ch. 170. In effect March 5, 1914).

Section 9285. Penalty for operating with short crews. —2. Any railroad company doing business in the State of Mississippi who shall send out on its road, or cause to suffer or permit to be sent out on its road, or any part thereof, outside of the yard limits, any train of the classes enumerated in Section 1, which is not manned in accordance with the provisions of that section, shall be guilty of a misde-

meanor, and upon conviction thereof, shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1000.00) for each offense. (Laws 1914, Ch. 170. In effect March 5, 1914).

Section 9286. Act not to apply in certain cases.—3. Nothing in this act shall be held as applying to any case of disaster or disability of any members, or members, of the crew arising while out on the road between division terminals, or to relief trains, or wrecking trains where men are not available; provided, this act shall not apply to branch or independent roads not over fifty miles in length. (Laws 1914, Ch. 170. In effect March 5, 1914).